MISCELLANY.

COURT OF APPEALS AT WYTHEVILLE.—The court will convene at Wytheville on Tuesday, June 6, 1899. There are *fifty-seven* cases on the docket, distributed as follows:

Criminal cases,	2
Sixteenth Circuit, Judge Sheffey	18
Corporation Court of Bristol, Judge Stuart	3
Fifteenth Circuit, Judge Jackson	12
Seventeenth Circuit, Judge Miller	5
Fourteenth Circuit, Judge Blair	5
Corporation Court of Radford, Judge Cassel	1
Corporation Court of Roanoke, Judge Woods	4
Fourth Circuit, Judge Whittle	2
Eighteenth Circuit, Judge Dupuy	5
	57

MALICIOUS PROSECUTION—CORPORATION, LIABILITY OF, TO ACTION FOR MALICIOUS ACT.—In *Cornford* v. *Carlton Bank* (1899), 1 Q. B. 392, Mr. Justice Darling has decided a point which, ever since the *obiter dictum* of the late Lord Bramwell in *Abrath* v. *North Eastern Ry.*, 11 App. Cas. 247, has been frequently the subject of judicial comment, viz., whether a corporation can be guilty of malice, Lord Bramwell, it may be remembered, declared that "a corporation is incapable of malice or of motive," his opinion being that, while those of the directors or shareholders who maliciously set the corporation in motion might be made liable, the corporation itself could not. This view has failed to meet with approval, and in the present case the point was expressly taken by the defendants at the trial of the action, which was one for malicious prosecution, and, as we have intimated, was overruled, the learned judge preferring to follow the judgment of Fry, J., in *Edwards* v. *Midland Ry.*, 6 Q. B. D. 287, and judgment for £100 damages was given in favor of the plaintiff.—*Canada Law Journal.*

[In America there is little or no dissent from the proposition that a corporation is liable for the malicious wrongs of its servants, done in the course of their employment. See 5 Thompson on Corporations, 6310, *et seq.*; Clark on Corporations, 193.—EDITOR VA. LAW REG.]

OPERATION OF THE TORRENS LAW.—The Cook County Recorder's office has been open some three months for the registration of land titles under the Torrens law. A considerable number of titles have been registered during that time, and now transfers are beginning to be made under the act. It is here that the great advantage of the system becomes apparent. The title to a piece of land once registered can be transferred from one person to another within an hour's time, and at a cost of only $3 in fees. The saving in time and money can be fully ap

preciated by those who are familiar with the time consumed and the cost entailed in making a real estate transfer under old methods.

Another advantage of the new system is that it makes land easily available as an asset on which loans can be quickly secured. Under the old regime it was customary to make only long-term loans on land, because of the complications and expense incident to the execution of such a loan. Under the Torrens system, however, there is no reason why sixty or ninety day loans should not be made on real estate as well as on stock and bonds. The certificate of title under the Torrens system is almost as easily handled as stocks or bonds. Last week a loan was made on a certificate of title. The time consumed in the transaction at the Recorder's office was only fifteen minutes.

As these advantages of the new system become generally known the number of titles registered may be expected to increase rapidly. A piece of land registered under the Torrens law is worth more than a similar piece not so registered, because it can be transferred to the buyer at less expense and trouble.—*Chicago Record.*

DIVORCE—CRUEL AND INHUMAN TREATMENT.—In the case of *Walton* v. *Walton*, in the Supreme Court of Nebraska, 77 N. W. 392 (Dec. 8, 1898), an action by the wife for divorce, it was alleged that the husband had used vile and opprobrious epithets toward her; that he had called her a bad woman, and accused her of committing adultery. The court held that a false charge of adultery made by a husband against his wife, and calling her vile and opprobrious names, was sufficient to constitute extreme cruelty according to the statute.

While it is admitted that the tendency has been, especially of late years, to extend the doctrine of cuelty as ground for divorce, both in this country and in England, by the weight of authority, the abuse and inhuman treatment must be such as renders cohabitation unsafe, or is likely to be attended with injury to the person or the health of the party. The test must be danger of life, limb or health. In *Evans* v. *Evans*, 1 Hagg Const. 35 (1790), it was said: "Mere austerity of temper, petulance of manners, rudeness of language, even occasional sallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty." In *Russell* v. *Russell* [1897] A. C. 395, a wife had charged her husband with committing an unnatural crime, and insisted in the charge publicly, after admitting that she had not an honest belief in the charge. The court held that such ill-treatment was no ground for divorce, saying there must be personal ill-treatment, such as blows or bodily injury of any kind, or threats of such description as would reasonably excite, in a mind of ordinary firmness, a fear of personal violence. Words, however abusive, offensive, harsh, obscene or vulgar, will not amount to extreme cruelty unless they be accompanied by some act indicating personal injury to life or health of the party. This principle is established by many cases. In *Cheatham* v. *Cheatham*, 10 Mo. 296 (1848), charges of infidelity do not constitute such cruelty as to entitle a person to divorce. In *Shaw* v. *Shaw*, 17 Conn. 189 (1845), the husband had charged the wife with adultery and used vulgar, obscene and harsh language, which would wound the feelings. It was held that these, unaccompanied with any act indicating personal violence, will not constitute extreme cruelty. To the same effect was *Detrick's Appeal*, 117 Pa. 452 (1888), where the court said: "There must have been actual personal violence,

or reasonable apprehension of it, or such a course of treatment as endangered her life or health and rendered cohabitation unsafe." In *Blair* v. *Blair*, 76 N. W. (Iowa) 700 (1898), the husband had charged the wife with adultery, but the court held that this treatment was not such as to endanger life, hence not sufficient cruelty as would entitle the wife to divorce. But any ill-treatment or the use of such language as produces mental suffering of sufficient degree as to injure the health, will be sufficient cruelty. In *Jefferson* v. *Jefferson*, 168 Mass. 456 (1897), the husband used vile and vulgar language to his wife when she was pregnant, and this was considered such extreme cruelty as to be injurious to health and sufficient ground for divorce.

The thought that pervades all the decisions is not to lay down any hard and fast rule as to legal cruelty, but to give protection to the complainant against actual or apprehended violence, physical ill-treatment or injury to health.—*American Law Register.*

BIGAMY—RE-MARRIAGE IN GOOD FAITH.—It is a disputed question whether the common law ingredient of intent is necessary in a crime, the origin of which is purely statutory. That each criminal enactment is a direct repeal of the common law on its particular subject, and that the offense is complete if the bare words of the statute are satisfied, is one prevailing view. Another theory is that such legislative interference is not a repeal, but merely a modification of the common law to the extent of the words of the enactment. All defenses, then, which were good before it was passed are to be regarded as still effectual, unless the words of the statute expressly negative their application. Between these two extreme views there is a middle one, which commends itself as a convenient rule. To certain offenses, such as police regulations, in their nature mere torts against the State, to a conviction of which no moral obloquy attaches, intent may well be considered irrelevant. 12 Harvard Law Review, 568. But to the more serious statutory offenses justice requires that a defendant may plead successfully all defenses not expressly negatived by the legislature. *Regina* v. *Tolson*, 23 Q. B. D. 168. And in such a grave statutory crime as bigamy the defendant should be able, as at common law, to avail himself of a mistake of fact, but by an inflexible rule could take no advantage of a mistake of law.

The Supreme Court of Arkansas have overlooked this view of practical justice in the recent case of *Russell* v. *State* (Ark.), 49 S. W. Rep. To an indictment for bigamy under the usual statute the defendant pleaded that he acted in the *bona fide* belief that he had been divorced from his first wife. He claimed that he had paid an attorney money to secure a separation, and had received through fraud a void certificate of the annulment of the marriage. The court, in holding that this evidence was properly excluded below, drew no distinction between a mistake of law and a mistake of fact. They evidently went to the extreme of saying that if the words of the statute are satisfied the defendant was guilty. Whether the result they reach is to be commended depends on the question whether Russell was laboring under a mistake of fact or one of law. The report is unfortunately too scanty for a clear decision. And the question is perplexing enough when it is noticed that all law from the point of view of its existence is a question of fact. It may be stated generally, however, that if with full knowledge of the facts one is in error as to the true rule of law to be applied, or if, laboring under an erroneous

impression that a certain state of facts exist, one is in error as to the true rule of law to be applied to those supposed circumstances, the mistake is one of law. Otherwise it is a mistake of fact. If, then, in the present case the defendant erroneously thought that this certificate of divorce without more was a legal annulment of his marriage by the laws of Arkansas, he was certainly to be convicted. If, however, he was led to suppose through fraud that a proper course of legal proceedings had taken place, a pure mistake of fact negativing a criminal intent should have led to his acquittal.—*Harvard Law Review.*

How to Keep Down the Multitude of Law Reports.—This is a question with which the lawyers are constantly wrestling. Our own judgment is that—great as is the evil of the multiplication of reported decisions and of law reports—the matter is one which must regulate itself by natural laws. The *Albany Law Journal* states that a plan has been suggested to it by a member of the profession in Kentucky, which is to get the legislature to pass an act creating a board of, say, three of the most learned lawyers in the State to sit together the year round, and to have the act provide that, immediately upon the delivery of opinions by the highest court in the State, such opinions shall go before the board for critical examination, and that only such as the board shall find to contain novel or important questions shall be published in the official reports. With great deference to the learned gentleman who has made this suggestion, does anybody believe that such an act could be passed by the legislature of Kentucky, or of any other State? Would such a board render their services gratuitously? If not, would a board "of the most learned lawyers in the State" consent to "sit all the year round" for small salaries, merely to determine what opinions of the Supreme Court should be officiallly reported, and what not? Lawyers of that high grade would be absorbed in the active and lucrative practice of their profession. Being so absorbed, can anyone doubt that they would either perform this duty in a perfunctory manner, or delegate it to young lawyers in their offices? The natural suggestion of common sense would be that the duty of deciding what decisions should be officially reported, should be left to the court itself. Its judges have heard the arguments, read the briefs, consulted over the case in their consultation room, and determined upon the opinion; and one of them has written it, and the court, or a majority of the court, have adopted it. The judges of the Court of Appeals of Kentucky are performing this very duty at the present time, and are making large numbers of their opinions "not to be officially reported." We are prepared to say that the manner in which they are performing this duty is without any rhyme, reason, or consistency, and is as absurd and unsatisfactory as a Russian press censorship. But does it serve to keep down the mass of judicial reports? By no means. It merely serves to keep down the volume of the official reports, published at the expense of the State, and that, too, by excluding therefrom many important decisions, especially upon corporation law, which ought to be included therein. We say important decisions: we do not say well-considered decisions; we do not say well thought-out or well-written opinions. The practice does not serve to keep down the unofficial reports of the decisions of that court, but serves merely to give a peculiar value to those unofficial reports. In every law office in Kentucky which has any pretense to a law library, there are found the bound volumes of the *Kentucky Law Journal*, which seems to be published for the

sole purpose of reporting the decisions which the Court of Appeals of Kentucky marked "not to be officially reported," as well as some decisions of inferior courts of that State. All of the decisions so marked are reported in the *Southwestern Reporter*, published by the West Publishing Company, of St. Paul. Under the rule of *stare decisis* they have the same force, as judicial precedents, as the decisions which are officially reported. Abstracts of them pass into the digests; they form a part of the great and constantly growing mass of case-made law. The moral is that there is but one way to suppress and keep down the multiplicity of junicial reports, and that is to prevent the judges from writing opinions; for if they write opinions which are not officially published, they will be privately published and greedily bought and used. Is any lawyer bold enough to propose this innovation? Are the bar and the public willing to trust even their courts of last resort to decide cases without giving any public reasons therefor? Such a practice would lead judges to lapse into lazy, negligent, perfunctory and inaccurate work. Nay more: The power of judges of courts of last resort of rendering decisions without giving any public reasons therefor would open the door to corruption—at least it would make corruption easy. This power has been conferred in some cases with the view of relieving congested dockets. But it has been a desperate choice between having justice in the courts of last resort imperfectly and dangerously administered, and not having it administered at all. What then are we going to do about it? We answer, let natural laws take their course. Let the remedy be wrought out by the natural law of action and reaction. With the judicial reports expanding into a mass too great to be read and mastered, the rule of judicial precedent in weakening, and must in time be obliterated. As that rule weakens, judges fall into the habit more and more of reasoning out their decisions on the basis of natural justice, and lawyers more and more acquire the habit of thinking out their cases and reasoning them out before the judges, instead of trying to make the judges decide this way or that, because, in some far-off lawsuit in another jurisdiction, some unknown judge wrote an opinion deciding the question in the same way. The idea that Smith and Jones on opposite sides of a lawsuit, aided by two or three incapable or tired judges in California, are, in working a lawsuit to a final decision, making law for us in Missouri—perhaps in a litigation which is really collusive and fraudulent—is the very definition of absurdity. When lawyers and judges turn themselves to reasoning on premises which have some relation to natural justice, the law will not only be better administered, but it will be more uniformly administered.—*American Law Review.*

"HENTAILS" AND "COCKTAILS."—According to the *London Chronicle* a cockney solicitor, who was characteristically mixed in the use of his h's, happened to meet the late Mr. Marbury, one of the wits of the American bar. The Englishman, commenting on the legal profession of New York, said that its members were very proficient and learned, but that they were absolutely ignorant on the subject of "hentails." "Ah," answered Marbury, "my dear sir, we may be ignorant of the 'hentail,' but our knowledge of the 'cocktail' is unsurpassed."

AN ETHIOPIAN LYRE.—There were five negro witnessess for the plaintiff in a recent case in the Law and Equity Court at Richmond, four of whom were em-

ployed at a large sales stables. Counsel referred to them as coming on the witness stand "reeking with the odors of the stable."

In replying, plaintiff's counsel said, "that might be true of the four negroes, but the fifth is employed in a music store and he came on the stand "scented with the perfumes of the Æolian lyre."

"You mean," said defendant's counsel, "Ethiopian."

EDITORIAL HEAVEN.—An editor, who died of starvation after making Dr. Tanner ashamed of himself, was being escorted to heaven by an angel who had been sent out for that purpose.

"May I look at the other place before we ascend to eternal happiness?"

"Easily," said the angel.

So they went below and skirmished around, taking in the sights. The angel lost track of the editor, and went around Hades to hunt for him. He found him sitting by a furnace fanning himself, and gazing with rapture upon a lot of people in the fire. There was a sign on the furnace, which said, "Delinquent Subscribers!"

"Come," said the angel, "we must be going."

"You go on," said the editor, "I'm not coming. This is heaven enough for me."—*Craftsman.*